

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TODD ROY GIBBONS,

Plaintiff,

v.

BOB FERGUSON,

Defendant.

CASE NO. C13-5189 BHS

ORDER DENYING MOTION TO
PROCEED IN FORMA
PAUPERIS AND DISMISSING
COMPLAINT

This matter comes before the Court on Plaintiff Todd Roy Gibbons's ("Gibbons") application to proceed in forma pauperis (Dkt. 1) and Gibbons's proposed complaint (Dkt. 1-1).

On March 14, 2012, Gibbons filed a motion to proceed *in forma pauperis* and a proposed complaint. Gibbons alleges that the United States, through the Washington Attorney General and local medical facilities, has caused him to receive an improper medical diagnosis in early 2005. Dkt. 1-1. Gibbons alleges that the improper diagnosis caused the unfavorable decision in his recent claim for social security benefits. *Id.*

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the

1 “privilege of pleading *in forma pauperis* . . . in civil actions for damages should be
2 allowed only in exceptional circumstances.” *Wilborn v. Escalderon*, 789 F.2d 1328 (9th
3 Cir. 1986). Moreover, the court has broad discretion in denying an application to proceed
4 *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375
5 U.S. 845 (1963).

6 A federal court may dismiss *sua sponte* pursuant to Fed. R. Civ. P. 12(b)(6) when
7 it is clear that the plaintiff has not stated a claim upon which relief may be granted. *See*
8 *Omar v. Sea Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (“A trial court may
9 dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6) Such a dismissal may be
10 made without notice where the claimant cannot possibly win relief.”).

11 In this case, Gibbons’s complaint fails to establish that the Court has subject
12 matter jurisdiction. Under the Federally Supported Health Centers Assistance Act
13 (“FSHCAA”), tort claims against qualified and federally funded physicians and clinics
14 are claims against the United States under the Federal Tort Claims Act (“FTCA”). 42
15 U.S.C. § 233. Gibbons has failed to allege that the physicians or clinics that diagnosed
16 him were qualified under the FSHCAA. Although these deficiencies may be solved by
17 amending the complaint, the more fundamental problem of filing an administrative claim
18 within the statute of limitations may not be solved by any amendment. On this issue, the
19 statutory language is clear that a court does not have jurisdiction before administrative
20 remedies have been exhausted, and a court must dismiss any action that is initiated
21 prematurely. *McNeil v. United States*, 508 U.S. 106, 111 (1993). Gibbons has failed to
22 show that he has exhausted his administrative remedies under the FTCA within the two-

1 year statute of limitations. Therefore, the Court **DENIES** Gibbons's motion to proceed
2 *in forma pauperis* (Dkt. 1) because it must **DISMISS** his complaint for lack of subject
3 matter jurisdiction.

4 **IT IS SO ORDERED.**

5 Dated this 20th day of March, 2013.

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8 BENJAMIN H. SETTLE
9 United States District Judge
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